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MAILED

JUL 01 2010

OFFICE OF PETITIONS

In re Patent of Zimmer	:	DECISION ON REQUEST
Patent No. 7,636,489	:	FOR RECONSIDERATION OF
Issue Date: December 22, 2009	:	PATENT TERM ADJUSTMENT
Application No. 10/826,596	:	AND NOTICE OF INTENT TO
Filing Date: April 16, 2004	:	ISSUE CERTIFICATE OF
Attorney Docket No. 119-0035US	:	CORRECTION

This is a decision on the petition filed on January 20, 2010, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by one thousand six hundred fifty (1650) days.

The petition to correct the patent term adjustment indicated on the patent to indicate the term of the patent is extended or adjusted by one thousand six hundred fifty (1650) days is **GRANTED to the extent indicated herein.**

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 C.F.R. § 1.136.

Applicant asserts the period of delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") is 669 days. However, applicant fails to include the 32-day time period from April 16, 2007 to May 18, 2007, as part of the period for A Delay. The total period of A Delay is 746 days based on the preceding discussion.

Applicant asserts the period of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay") is 981 days. Pursuant to 35 U.S.C. § 154(b)(1)(B)(ii), B Delay does not include any time period consumed by appellate review. Therefore, B Delay does not include the 360 days consumed by appellate review as a result of the Notice of Appeal filed August 12, 2008. B Delay is 621 days after removal of the time period consumed by appellate review.

With respect to the period of adjustment for the Office taking in excess of three years to issue the patent, 35 U.S.C. § 154(b)(2)(A) limits Office delay to the sum of delay under A Delay and B Delay to the extent such periods of delay are not overlapping. The office has determined the period of overlapping delay is 45 days.

In view of the prior discussion, the patent term is 1322 days, which is the sum of 746 days of A Delay and 621 days of B Delay reduced by 45 days of overlapping delay.

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **one thousand three hundred twenty-two (1322)** days.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

**UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION**

PATENT NO. : 7,636,489 B2
APPLICATION NO. : 10/826,596
DATED : December 22, 2009
INVENTOR(S) : Mark Zimmer

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the Title page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 981 days.

Delete the phrase "by 981 days" and insert -- by 1322 days--